

1 DANIEL G. BOGDEN
United States Attorney
2 District of Nevada
BLAINE T. WELSH
3 Assistant United States Attorney
Nevada Bar No. 4790
4 CARLOS A. GONZALEZ
Assistant United States Attorney
5 333 South Las Vegas Blvd. Suite 5000
Las Vegas, NV 89101
6 Tel: (702) 388-6336
Fax: (702) 388-6787
7 Email: Blaine.Welsh@usdoj.gov
Email: Carlos.Gonzalez2@usdoj.gov
8 Attorneys for Defendant
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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 JOANNE MARIE BRAWDY,)
13)
14 Plaintiff,)
15)
16 v.)
17)
18)

Case No.: 2:13-cv-00954-GMN-PAL

15 CAROLYN W. COLVIN,)
Acting Commissioner of Social Security,)
16)
17 Defendant.)
18)

19 **DEFENDANT'S APPLICATION FOR STAY DURING LAPSE IN APPROPRIATIONS**

20 Defendant Carolyn Colvin, Acting Commissioner of Social Security, requests the Court to stay
21 proceedings in this matter during the period of lapse in appropriations for the United States Department
22 of Justice and the Federal Defendant.

23 At midnight on September 30, 2013, the continuing resolution that was funding the Department
24 of Justice and appropriations to the Department lapsed. The same is true for most Executive Branch
25 agencies, including the Federal Defendant involved in this case. The date when funding will be restored
26 by Congress has not been established.

1 The Anti-Deficiency Act, 31 U.S.C. §1341, as construed by the Attorney General, provides that
 2 in the absence of appropriated funds no obligation can be incurred except for the protection of life and
 3 property, the orderly suspension of operations, or as otherwise authorized by law. This means that
 4 absent an appropriation, Department of Justice attorneys and employees of the Federal Defendant's
 5 agencies are prohibited from working, even on a volunteer basis, "except for emergencies involving the
 6 safety of human life or the protection of property." 31 U.S.C. §1342. Accordingly, each U.S. Attorney
 7 has been instructed to designate those attorneys and support staff whose work is necessary to sustain
 8 legal operations essential to the safety of human life and the protection of property. The Department of
 9 Justice has issued guidance which gives priority to continuing work on criminal cases. Consequently,
 10 only a very few employees in the Civil Division of the United States Attorney's Office for the District of
 11 Nevada will be authorized to work during a lapse in appropriations – the rest have been furloughed.

12 The agency attorneys assigned to handle Social Security appeals, who participate in all aspects of
 13 the preparation and filing of pleadings in Social Security appeals cases, have also been furloughed for
 14 the duration of the lapse in appropriations. The need for the relief of a stay is urgent because of the
 15 following impending deadline(s):

16	<u>Item</u>	<u>Due Date</u>
17	Defendant's response to motion to remand	October 15, 2013

18 Therefore, the undersigned counsel requests a stay of this matter until Congress has restored
 19 appropriations and the assigned attorneys are permitted to resume work on this case.

20 Denial of a stay in this matter would be prejudicial to the interests of the United States. Appeals
 21 such as this one require familiarity with the administrative record and with the procedures applicable to
 22 Social Security disability benefits determinations. The Government does not have civil attorneys
 23 available to become conversant with this entire case in the short time available to complete the filing
 24 required next week, nor could an attorney adequately present the position of the United States on that
 25 matter due to the lack of familiarity with the case and its issues. Plaintiff will not be prejudiced by the

26 . . .

1 proposed delay because the delay is not anticipated to significantly alter the course of resolution of this
2 matter.

3 If this motion for a stay is granted, undersigned counsel will notify the Court as soon as Congress
4 has appropriated funds. It is requested that, at that time, all current deadlines for the parties be extended
5 commensurate with the duration of the lapse in appropriations. A form of order is attached.

6 Dated this 9th day of October, 2013.

7 Respectfully submitted

8 DANIEL G. BOGDEN
9 United States Attorney

10 /s/ Blaine T. Welsh
11 BLAINE T. WELSH
12 Assistant United States Attorney
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PROOF OF SERVICE

I, Blaine T. Welsh, certify that the following individual(s) were served with a copy of the foregoing **DEFENDANT'S APPLICATION FOR STAY DURING LAPSE IN APPROPRIATIONS** on the date, and via the method of service, identified below:

CM/ECF:

John C. Boyden, Esq.
ERICKSON, THORPE & SWAINSTON, LTD.
P.O. Box 3559
Reno, NV 89505
Email: jboyden@etsreno.com

Shanny J. Lee, Esq.
LAW OFFICE OF HARRY J. BINDER
AND CHARLES E. BINDER PC
770 The City Drive So., Suite 2000
Orange, CA 92868
Email: shannyjlee@gmail.com

Attorneys for Plaintiff

Dated this 9th day of October, 2013.

/s/ Blaine T. Welsh
BLAINE T. WELSH
Assistant United States Attorney

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4 **UNITED STATES DISTRICT COURT**
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6 JOANNE MARIE BRAWDY,)

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9 CAROLYN W. COLVIN,)
10 Acting Commissioner of Social Security,)

11 Defendant.)
12

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ORDER

13 This matter is before the Court on Defendant's Motion for Stay During Lapse on Appropriations,
14 filed October 9, 2013. The undersigned has reviewed the motion and finds there is good cause for the
15 requested stay. Accordingly,

16 **IT IS HEREBY ORDERED** that Defendant's Motion for Stay During Lapse on Appropriations
17 is **granted** and all time limits and deadlines in this case are extended for a period of time equal to the
18 duration of the lapse in appropriations.

19 **IT IS FURTHER ORDERED** that the parties shall submit a new scheduling order within
20 fourteen (14) days after the lapse in appropriations is resolved.

21 DATED: October 3, 2013.

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23 UNITED STATES MAGISTRATE JUDGE
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